

# SENATE BILL No. 281

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-3-11.

**Synopsis:** Vacating covenants and commitments. Allows a private owner to amend or vacate recorded covenants by complying with the procedure contained in the covenant or by petitioning a court. (Under current law an owner may request vacation of a commitment in a petition to vacate all or part of a plat.) Allows a government owner of land to vacate a commitment or a recorded covenant by including the request to vacate in a petition to vacate all or part of a plat if the vacation is for a direct government purpose.

**Effective:** July 1, 2006.

**Young R**

January 9, 2006, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## SENATE BILL No. 281

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 36-7-3-11 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) The owner of  
3       land in a plat may file with the plan commission that has jurisdiction  
4       over the platted area under IC 36-7-4 a petition to vacate all or part of  
5       the plat pertaining to the land owned by the petitioner.

6       (b) The petition **to vacate all or part of the plat** must:

7           (1) state the reasons for and circumstances prompting the request;

8           (2) specifically describe the property in the plat proposed to be  
9           vacated; and

10          (3) give the name and address of each owner of land in the plat.

11       The petition may include a request to vacate any recorded covenants or  
12       commitments filed as part of the plat. The covenants or commitments  
13       are then also subject to vacation.

14       (c) This subsection applies if a private owner of land in a plat  
15       petitions to vacate all or part of the plat. If the petition includes a  
16       request to vacate a commitment filed as part of the plat, the  
17       commission may vacate the commitment. However, a recorded

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covenant filed as part of a plat may be amended or vacated only by complying with the procedure set forth in subsection (e).

(d) This subsection applies if a government owner of land in a plat petitions to vacate all or part of the plat. If the petition to vacate all or part of the plat includes a request to vacate:

(1) a commitment filed as part of the plat, the commission may vacate the commitment; or

(2) a recorded covenant for a direct government purpose, the commission may vacate the recorded covenant.

(e) A private owner of land in a plat may amend or vacate a recorded covenant filed as part of the plat as follows:

(1) If the terms of the covenant include a procedure for amending or vacating the covenant, by complying with the procedure.

(2) If the terms of the covenant do not include a procedure for amending or vacating the covenant, the owner must do the following:

(A) Petition the circuit or superior court of the county in which the land is located to amend or vacate the covenant. The petitioner must notify each:

(i) owner of land in the plat; and

(ii) party to the covenant;

by certified mail at least ten (10) days before the hearing on the petition.

(B) If creation of the covenant was required by a government entity as a condition of the government entity granting its approval or taking official action (including approval of subdivision of the land or providing project funding), the covenant may not be amended or vacated without the government entity's approval.

(f) Within thirty (30) days after receipt of a petition for vacation of a plat, the plan commission staff shall announce the date for a hearing before the plan commission. The plan commission shall, by rule, prescribe procedures for setting hearing dates, mailing written notice to each owner of land in the plat, and providing such other notice as may be required in accordance with IC 36-7-4-706. The petitioner shall pay all expenses of providing the notice required by this subsection.

(g) The plan commission shall, by rule, prescribe procedures for the conduct of the hearing, which must include a provision giving each owner of land in the plat an opportunity to comment on the petition.

(h) The plan commission shall approve or deny the petition for

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vacation **of all or part of the plat**. The plan commission shall approve the petition for vacation of all or part of a plat only upon a determination that:

(1) conditions in the platted area have changed so as to defeat the original purpose of the plat;

(2) it is in the public interest to vacate all or part of the plat; and

(3) the value of that part of the land in the plat not owned by the petitioner will not be diminished by vacation.

~~(f)~~ **(i)** If, after the hearing, the plan commission determines that the plat or part of the plat should be vacated, it shall make written findings and a decision approving the petition. The plan commission may impose reasonable conditions as part of its approval. The decision must be signed by an official designated in the subdivision control ordinance. The plan commission shall furnish a copy of its decision to the county recorder for recording.

~~(g)~~ **(j)** If, after the hearing, the plan commission disapproves the petition for vacation, it shall make written findings that set forth its reasons in a decision denying the petition and shall provide the petitioner with a copy. The decision must be signed by the official designated in the subdivision control ordinance.

~~(h)~~ **(k)** The approval, disapproval, or imposition of a condition on the approval of the vacation of all or part of a plat is a final decision of the plan commission. The petitioner or an aggrieved party may seek review of the decision of the plan commission as provided by IC 36-7-4-1016.

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